TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 509.

THE UNITED STATES, APPELLANT,

vs.

STEPHEN C. MILLS.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 21, 1905.

(19609.)

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1 STEPHEN C. MILLS
vs.
UNITED STATES. } No. 23303.

PETITION. 1.

(Filed June 16, 1903.)

To the Honorable the Court of Claims:

The claimant, Stephen C. Mills, respectfully represents:

I.

That he entered the military service of the United States as a cadet at the Military Academy July 1, 1873, and was commissioned a second lieutenant on June 15, 1877. By successive promotions he reached the grade of major with an appointment as inspector-general on July 25, 1898. He was promoted to lieutenant-colonel and inspector-general February 2, 1901.

II.

On May 26, 1900, he was, under orders issued by competent authority, on duty with the Army of the United States in the Philippine Islands, where he served until ordered to return to the United States. He left the Philippine Islands under orders for the United States and arrived in San Francisco, California, April 15, 1902.

III.

On May 26, 1900, to February 1, 1901, while in the grade of major, claimant was paid, in accordance with sections 1261, 1262 of the Revised Statutes, at the rate of $3,500 a year. Under the act of May 26, 1900 (31 Stat. L., 211), claimant received an additional ten per centum calculated upon $2,500, making his total pay for said period at the rate of $3,750 a year. From February 2, 1901, to April 15, 1902, claimant was paid in accordance with said laws at the rate of $4,000 a year. He also received under the act of May 26, 1900, an additional ten per centum calculated upon $3,000, making his total rate of pay for said period $4,300 a year.

IV.

Under the act of May 26, 1900, claimant is entitled to be paid as follows:

May 26, 1900, to February 2, 1901—	
Pay of the grade of major as established by section 1261 R. S..	$2,500
Longevity increase as established by section 1262 R. S., of ten per cent for five years' service.....	1,000
Ten per cent increase over and above the rates of pay proper, as fixed by the act of May 26, 1900 (31 Stat. L., 211).....	350
Total.....	3,850

2 February 2, 1901, to April 15, 1902—

Pay of the grade of lieutenant-colonel as provided by section 1261 R. S.	$3,000
Longevity increase as provided by section 1262 R. S., of ten per cent for each five years' of service, subject to section 1267 R. S., limiting the pay of a lieutenant-colonel to $4,000	1,000
Ten per cent increase on pay proper, as provided by the acts of May 26, 1900 (31 Stat. L., 211), and March 2, 1901 (31 Stat. L., 903)	400
Total	4,400

A difference therefore arises in favor of claimant for the period from May 26, 1900, to the date of his return to the United States, April 15, 1902, amounting to $188.87, which he claims.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of one hundred and eighty-eight dollars and eighty-seven cents ($188.87).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

Stephen C. Mills, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

STEPHEN C. MILLS.

Subscribed and sworn to before me this 15th day of June, 1903.

[SEAL.] JOHN J. COOK,
Notary Public.

3 GENERAL TRAVERSE. II.

(Filed December 13, 1904.)

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW. III.

(Filed December 19, 1904.)

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT:

I. Appointment and service.

The claimant, Stephen C. Mills, entered the military service of the United States as a cadet at the Military Academy July 1, 1873, was commissioned second lieutenant June 15, 1877, and by successive promotions became major and inspector-general July 25, 1898, and lieutenant-colonel and inspector-general February 2, 1901, and still holds the last-named rank and office.

II. Service beyond the limits of the States, etc.

The claimant was by proper military orders on duty with the Army of the United States in the Philippine Islands from a date prior to May 26, 1900, continuously until April 15, 1902, when, in accordance with orders, he arrived at San Francisco, California, on his return from said Philippine Islands. During all of that period he was serving in the Philippine Islands and beyond the limits of the States comprising the Union and the Territories of the United States contiguous thereto.

III. Rate of pay.

During the entire period from May 26, 1900, to April 15, 1902, named in the next preceding finding, the claimant while holding the rank of major was paid at the rate of $2,500 a year, the minimum pay of the grade of major established by section 1261 of the Revised Statutes; $1,000 longevity increase established by section 1262 of the Revised Statutes, and $250 a year as the increase of ten per cent upon his pay proper provided by the act of May 26, 1900 (31 Stat. L., 211), but calculated only upon the minimum or grade pay fixed by said section 1261.

While holding the rank of lieutenant-colonel during said period the claimant was paid at the rate of $3,000 a year, the minimum pay of that grade as provided by section 1261 of the Revised Statutes, $1,000 longevity increase provided by section 1262, and $300 a year as ten per cent increase on his pay proper as provided by the acts of May 26, 1900, and March 2, 1901 (31 Stat. L., 211, 903), but computed only on the minimum pay of the grade.

5 *IV. Corrected calculation.*

If said ten per cent increase should be calculated upon the total pay of $3,500 received by the claimant while in the rank of major, his increase would be at the rate of $350 a year instead of $250, and if so calculated while he was in the rank of lieutenant-colonel the increase

would be at the rate of $400 a year instead of $300, making a difference of $100 a year for the period covered by the claim, and aggregating for the entire period $188.87.

CONCLUSIONS OF LAW.

Upon the foregoing facts, the court decides as a conclusion of law that the claimant is entitled to the sum of $188.87, being the calculation of ten per cent increase of pay as aforesaid at the rate of $400 a year instead of $300, a difference of $100 a year, for a period covered by the claim. The reasons for said conclusion have heretofore been set forth by the court in the opinion in the case of Irwin v. The United States (38 C. Cls. R., 87, 101–103) as follows:

"The next question for determination on this branch of the case relates to the 10 per cent increase allowed for service over and above the rates fixed by law in times of peace, and the proper method of calculating the increase.

"The act of May 26, 1900 (31 Stats., 211), is an army act. It provides 'That hereafter the pay proper of all officers and enlisted men serving in Porto Rico, Cuba, the Philippine Islands, Hawaii, and the Territory of Alaska shall be increased 10 per centum for officers and 20 per centum for enlisted men over and above the rates of pay proper as fixed by law in time of peace.' Under the operation of the acts of March 3, 1899, and March 3, 1901, plaintiff claims that as his service on shore at the Cavite Naval Station was shore duty beyond seas he is entitled to the full sea pay of his rank while on such duty, as provided by law for officers of the Army of corresponding rank similarly detailed, and that the increase of the pay proper of officers and enlisted men made in the Army appropriation act of May 26, 1900, grants to him, under the operation of the act of March 3, 1899, an increase of 10 per cent of his pay proper, such pay proper being the sum of $3,500 a year as the pay of an officer of his rank of more than twenty years' service. But the question is whether the increase shall be calculated upon the minimum pay of the grade or upon the total pay, including longevity increase. In other words, shall the increase be computed upon $2,500, constituting the lowest pay of a lieutenant-commander, or upon $3,500, constituting the total pay which carries the amount of the longevity increase?

6 "The proper determination of the question depends upon the true meaning of the words 'pay proper' as they appear in the statute.

"It is insisted by the defendants that in using the words 'pay proper' the minimum pay of the grade is the true basis of calculation. That is the construction of the accounting officers. (4 Comp. Dec., 668, and 6 Comp. Dec., 944.)

"The want of any statutory definition or direct judicial determination involves the matter in doubt as to whether 'pay' and 'pay proper' are equivalent, and whether the word 'proper' refers to any special kind of pay or only means that compensation which is properly called 'pay.'

"Military lexicons disclose differences between pay and allowances to officers. These differences nowhere appear more clearly stated than in Sherburne's case (16 Cls. R., 491), in which, quoting from Scott's Military Dictionary, it is shown that 'Pay is a fixed and direct amount given by law to persons in the military service in consideration of and as compen-

sation for their personal service. Allowances, as they are now called, or emoluments, as they were formerly termed, are indirect or contingent remuneration which may or may not be earned, and which is sometimes in the nature of compensation and sometimes in the nature of reimbursement.'

"In Tyler v. United States (16 C. Cls. R., 223) the method of computing longevity pay prescribed by section 1262 of the Revised Statutes was declared to be not by taking one-tenth of the officer's fixed annual pay, but one-tenth of his current yearly pay; that is, his second longevity pay to include 10 per cent of his first longevity pay, subject to another provision limiting the total amount of such increase to 40 per cent of the fixed annual pay. In affirming this judgment, Mr. Justice Miller, for the Supreme Court, said that 'the words "current yearly pay" require that when the increased pay for any period of five years is to commence the 10 per cent must be counted on the regular salary added to its increase by any previous periods of five years; so that the original salary of the rank and any additions of 10 per cent previously earned for periods of five years constitute the current yearly pay on which said 10 per cent is to be calculated.' (105 U. S. R., 244, 246.)

"In Emory v. United States (19 C. Cls. R., 255) it was held that the 'three months' extra pay' given to those who served in the war with Mexico, by the acts of 1848 and 1879, is pay proper, not pay and allowances. This opinion treats 'pay' and 'pay proper' as interchangeable terms.

"An officer's annual pay implies a pay subject to change. When the longevity increase attaches it is as much of the officer's proper pay as the amount first fixed.

"Pay proper is pay regulated by service. It depends upon the officer's longevity. Longevity arises out of length of service and is founded on that. The pay proper in such a case is determinable upon an officer's lustrum—the amount he is to receive for every five years' period of service.

"Longevity pay provisions are a legislative convenience. They go hand in hand with the officer's pay as the years add to his term of service. These provisions say in effect that a major shall receive, during the first five years of service, $2,500; during the second, $2,750, etc. Thus longevity pay is as fixed and certain as if actual amounts had been named.

"From these views we think that the computation made upon the minimum pay of the grade is erroneous.

7 JUDGMENT. IV.

(Filed December 19, 1904.)

At a Court of Claims held in the city of Washington, on the nineteenth day of December, A. D. 1904, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Stephen C. Mills, have and recover of and from the United States the sum of one hundred and eighty-eight dollars and eighty-seven cents ($188.87).

8 APPLICATION FOR AND ALLOWANCE OF APPEAL. V.

(Filed January 4, 1905.)

From the judgment rendered in the above-entitled case on the nineteenth day of December, 1904, in favor of the claimant the defendants, by their Attorney-General, on the 4th day of January, 1905, make application for and give notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Allowed, January 4, 1905.
CHARLES C. NOTT,
Chief Justice.

9 In the Court of Claims.

STEPHEN C. MILLS
vs.
THE UNITED STATES. } No. 23303.

I, Archibald Hopkins, clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, and judgment with the application for and allowance of the appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 18th day of January, 1905.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk, Court of Claims.

10 (Indorsement on cover:) File No. 19609. Court of Claims. Term No., 509. The United States, appellant, vs. Stephen C. Mills. Filed January 21st, 1905. File No. 19609.